

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.622(b) )  
Table of Allotments, )  
Digital Television Broadcast Stations )  
(Miami, Florida) )  
 )

MM Docket No. 00-125  
RM-9908

To: Chief, Video Services Division  
Mass Media Bureau

**COMMENTS OF PAXSON COMMUNICATIONS LICENSE CO., LLC**

Paxson Communications License Co., LLC ("Paxson"), licensee of WPXM(TV) and applicant for WPXM-DT, Miami, Florida, by its attorneys and pursuant to the Commission's *Notice of Proposed Rule Making* ("Notice") in the above-captioned proceeding, hereby respectfully submits these comments. The *Notice* responds to a Petition by NBC Stations Management, Inc. ("NBC") seeking that the Commission amend Section 73.622(b), the DTV Table of Allotments, by substituting Channel 31 as the assigned DTV channel for its station WTVJ-DT (Miami, Florida).

The Commission's *Notice* is born of a settlement agreement between NBC and Paxson that is reflected in the Joint Request for Approval of Global Settlement submitted to the Commission on December 16, 1999.<sup>1</sup> Paxson and NBC both had filed mutually exclusive petitions seeking the substitution of Channel 31 for their respective Miami DTV stations.

<sup>1</sup> "Joint Request" attached as Exhibit A.

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Believing that the public interest was best served by amicable agreement, the *Joint Request* proposed the dismissal of Paxson's petition and alternatively proposed to relocate WPXM-DT's facilities to the Hollywood Antenna Farm.<sup>2</sup> The *Joint Request* removed the mutual exclusivity and permitted NBC to pursue the channel reallocation as it initially proposed, resulting in the issuance of the *Notice*.

Paxson and NBC believed that the *Joint Request* would conserve the Commission's resources and hasten the implementation of digital television without adversely affecting other parties. The Commission consistently has stated that it intended "to provide broadcasters with the flexibility to develop alternative [DTV] allotment approaches."<sup>3</sup> Acknowledging that the implementation of digital television would be a dynamic process, the Commission encouraged voluntary broadcaster negotiation and coordination efforts in modifying the DTV Table of Allotments and stated that "[p]arties should be afforded as much flexibility as possible . . . so they may address situations that may be unique to their particular circumstances."<sup>4</sup> The proposal in the *Joint Request* demonstrates the wisdom and value of the Commission's far-sighted policies and embodies the good faith efforts of two broadcasters to reach a constructive, cooperative, and beneficial agreement.

Accordingly, pursuant to the *Joint Request*, Paxson urges the Commission to grant the *Modification Application* prior to the issuance of an order or orders granting WTVJ-DT's proposed channel substitution.

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<sup>2</sup> FCC File No. BPCDT-19991020ACC ("*Modification Application*"); attached as Exhibit B.

<sup>3</sup> Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418, ¶187 (1998).

<sup>4</sup> *Id.* at ¶147.

If the Commission does not grant the *Modification Application* by such time, the Commission accordingly should construe these comments as a counterproposal for allotting Channel 31 to WPXM-DT as Paxson initially proposed in its own Petition for Rule Making.

Paxson wishes to make it clear that it overwhelmingly prefers, consistent with the *Joint Request*, that the Commission grant both the *Modification Application* and the WTVJ-DT channel change. It should be just as obvious, however, that Paxson never would have requested that the Commission dismiss its petition for DTV Channel 31 had it known that WTVJ-DT would be allotted Channel 31 but its *Modification Application* would not be granted. As Paxson previously indicated, the tower for WPXM(TV)'s analog transmitter cannot support additional DTV equipment. With relocation thus required for WPXM-DT, the only site which would avoid receiver antenna orientation problems for viewers of the station is the Hollywood Antenna Farm, where many area stations currently transmit.

To the extent necessary, Paxson will formally withdraw these instant comments if the Commission grants the *Modification Application*.

THEREFORE, for the foregoing reasons, if the Commission fails to grant the *Modification Application*, Paxson respectfully requests that the Commission construe these

instant comments as a counterproposal to the proposed amendment of Section 73.622(b) of its Rules to substitute Channel 31 for use by WTVJ-DT.

Respectfully Submitted,

**PAXSON COMMUNICATIONS LICENSE CO., LLC**

By: 

John R. Feore, Jr.

Scott S. Patrick

Its Attorneys

Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036-6802  
202-776-2000

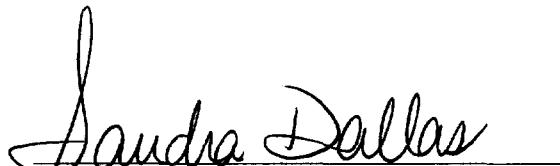
Dated: September 5, 2000

## CERTIFICATE OF SERVICE

I, Sandra Dallas, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 5th day of September, 2000, the foregoing "COMMENTS OF PAXSON COMMUNICATIONS LICENSE CO., LLC" were served via first class mail (except where hand delivery is noted by an asterisk) to the following:

Diane Zipursky, Esq. - \*  
National Broadcasting Company, Inc.  
1229 Pennsylvania Avenue, NW  
11<sup>th</sup> Floor  
Washington, DC 20004

Mr. Don Browne  
NBC Stations Management, Inc.  
316 North Miami Avenue  
Miami, FL 33128

  
Sandra Dallas

**EXHIBIT A**

**Joint Request for Approval of Global Settlement**  
(filed by NBC and Paxson)

DOW, LOHNES & ALBERTSON, PLLC  
ATTORNEYS AT LAW

**STAMP & RETURN**

JOHN R. FEORE, JR.  
DIRECT DIAL 202-776-2786  
jfeore@dlalaw.com

WASHINGTON, D.C.  
1200 NEW HAMPSHIRE AVENUE, N.W. • SUITE 800 • WASHINGTON, D.C. 20036-6802  
TELEPHONE 202-776-2000 • FACSIMILE 202-776-2222

ONE RAVINIA DRIVE • SUITE 1600  
ATLANTA, GEORGIA 30346-2108  
TELEPHONE 770-901-8800  
FACSIMILE 770-901-8874

December 16, 1999

Magalie Roman Salas, Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Attention: Stop Code 1800E1  
Television Branch

RECEIVED  
DEC 16 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

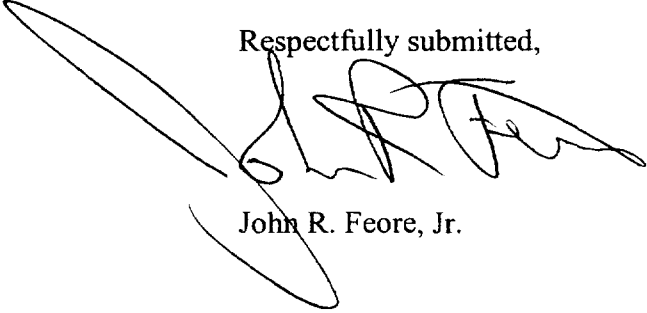
Re: Paxson Communications License Co., LLC  
Petition for Substitution of DTV Allotment  
Channel 31, Miami, Florida (WPXM)  
NBC Stations Management, Inc.  
Petition for Substitution of DTV Allotment  
Channel 31, Miami, Florida (WTVJ)

Dear Ms. Salas:

There is transmitted herewith, in triplicate, on behalf of Paxson Communications License Co., LLC ("Paxson") and NBC Stations Management, Inc. ("NBC"), a Joint Request for Approval of Global Settlement. The Global Settlement Agreement requests the dismissal of the mutually-exclusive petition for rulemaking of Paxson seeking to substitute Channel 31 as the allotment for WPXM-DT, Miami, Florida. Grant of the Joint Petition would remove the mutual exclusivity for the Paxson Petition and the NBC Petition for Rulemaking to substitute Channel 31 as the DTV allotment for WTVJ-DT. In addition, Paxson requests the expeditious processing and grant of its pending DTV application for Channel 26 (FCC File No. BPCDT-19991020\_\_).

Should there be any questions concerning the enclosed amendment, kindly communicate with the undersigned or with Diane Zipursky, Esquire, counsel for NBC Stations Management, Inc.

Respectfully submitted,

  
John R. Feore, Jr.

JRF/lis  
Enclosure

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In re Petitions for Rule Making of	)
	)
<b>PAXSON COMMUNICATIONS</b>	)
<b>LICENSE CO., LLC</b>	)
	)
<b>NBC STATIONS MANAGEMENT, INC.</b>	)
	)
Amendment of Section 73.622(b)	)
Table of Allotments,	)
Digital Television Broadcast Stations	)
(Miami, Florida)	)
	)

To: Chief, Video Services Division  
Mass Media Bureau

**JOINT REQUEST FOR APPROVAL OF GLOBAL SETTLEMENT**

Paxson Communications License Co., LLC ("Paxson") and NBC Stations Management, Inc. ("NBC"), pursuant to the Commission's Orders in MM Docket 87-268 (*Advanced Television Systems and Their Impact Upon the Existing Television Service*), respectfully request that the Commission grant this Joint Request for Approval of Global Settlement ("Joint Request"), approve the settlement proposed herein and in the Global Settlement Agreement dated December 14, 1999 (the "Settlement Agreement"), and dismiss the above-captioned mutually exclusive petition for rule making of Paxson seeking to substitute channel 31 as the allotment for WPXM-DT (the "Paxson Petition"). Grant of the Joint Request would remove the mutual exclusivity of the Paxson Petition and NBC's Petition for rule making which sought to substitute channel 31 as the DTV allotment for WTVJ-DT (the "NBC Petition") and permit the Commission to issue a Notice of Proposed Rule Making in response thereto. Paxson will seek to prosecute its construction permit application to relocate WPXM-DT to the Hollywood Antenna Farm (FCC File No. BPCDT-19991020\_\_\_\_) (the "Paxson Relocation Application"). In support of this request, the following is shown:



1. This Joint Request proposes the dismissal of the Paxson Petition and the release of a Notice of Proposed Rule Making in response to the NBC Petition. Attached hereto as Exhibit 1 is a copy of the Settlement Agreement, and as Exhibit 2 is the letter signed requesting the dismissal of the Paxson Petition.

2. The Settlement Agreement and this Joint Request are expressly contingent upon the Commission issuing an order or orders granting this Joint Request, approving the Settlement Agreement, dismissing the Paxson Petition, and releasing a Notice of Proposed Rule Making in response to the NBC Petition. Accordingly, the parties request that the Commission adopt an order or orders taking such action or actions on the same date, and promptly issue public notice or notices of such actions thereafter.

3. The Commission consistently has stated that it intended “to provide broadcasters with the flexibility to develop alternative [DTV] allotment approaches.”<sup>1</sup> Acknowledging that the implementation of digital television would be a dynamic process, the Commission encouraged voluntary broadcaster negotiation and coordination efforts in modifying the DTV Table of Allotments and stated that “[p]arties should be afforded as much flexibility as possible so they may address situations that may be unique to their particular circumstances.”<sup>2</sup> The Joint Request reflects the voluntary efforts of Paxson and NBC to improve the DTV Table of Allotments and resolve the existing mutual exclusivity. Grant of this Joint Request would serve the public interest by expediting the initiation of new digital television broadcast services for Miami, Florida, and surrounding communities and conserving Commission resources in evaluating the mutually exclusive petitions.

WHEREFORE, the above premises being considered, the above-captioned petitioners respectfully request that the Commission grant this Joint Request, approve the Global Settlement

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<sup>1</sup> Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, MM Docket 87-268, 13 FCC Rcd 7418 at ¶187.

<sup>2</sup> *Id.* at ¶147 (1998). See generally, *id.* at ¶¶141, 146-147, and *Sixth Report and Order*, 12 FCC Rcd 14588 at ¶182 (1997).

proposed herein and the Settlement Agreement attached hereto, dismiss the mutually exclusive Paxson Petition, and release a Notice of Proposed Rule Making in response to the NBC Petition.

Respectfully submitted,

PAXSON COMMUNICATIONS LICENSE CO., LLC

NBC STATIONS MANAGEMENT, INC.

By: 

Counsel

John R. Feore, Jr.  
Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036-6802  
202-776-2000

By: 

Counsel

Diane Zipursky, Esq.  
National Broadcasting Company, Inc.  
1299 Pennsylvania Ave., N.W.  
11th Fl.  
Washington, D.C. 20004  
202-637-4535

## **Joint Request Exhibit 1**

50.0

**PAXSON COMMUNICATIONS LICENSE CO., LLC  
NBC STATIONS MANAGEMENT, INC.  
SETTLEMENT AGREEMENT**

This Settlement Agreement is made as of this 14th day of December, 1999, by and between Paxson Communications License Co., LLC ("Paxson") and NBC Stations Management, Inc. ("NBC").

**WITNESSETH**

WHEREAS, Paxson has tendered to the Federal Communications Commission ("FCC" or "Commission") a petition (the "Paxson Petition") to substitute channel 31 as the paired digital television ("DTV") allotment for its licensed commercial television broadcast station WPXM to serve Miami, Florida, and with facilities relocated to the Hollywood Antenna Farm.

WHEREAS, NBC also tendered to the Commission a petition (the "NBC Petition") to substitute channel 31 as the paired DTV allotment for its licensed commercial television broadcast station WTVJ;

WHEREAS, the Paxson Petition and the NBC Petition are mutually exclusive and remain pending before the FCC;

WHEREAS, the Commission encouraged broadcasters to negotiate alternative DTV allotment arrangements to facilitate the implementation of digital television;

WHEREAS, Paxson and NBC have negotiated to resolve the mutual exclusivity of their petitions and believe that the public interest will best be served by amicable agreement because such resolution will conserve resources of the Commission and will hasten inauguration of new commercial digital television service to Miami, Florida more quickly than would otherwise be possible without adversely affecting any other parties;

WHEREAS, Paxson shall request the dismissal of the Paxson Petition, but reserves the right to file comments in response to the NBC Petition if the FCC does not authorize the relocation of WPXM's channel 26 DTV facilities to the Hollywood Antenna Farm ("Paxson Relocation");

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth below, and with the intention of being legally bound hereby, Paxson and NBC agree to the following:

1. ***Joint Requests and Cooperation.***

(a) Within five (5) days of the execution of this Settlement Agreement and all other agreements and documents contemplated hereby, but in no event later than December 23, 1999, Paxson and NBC shall prepare, file, and prosecute in good faith a request in writing to the Commission (collectively, the "Joint Request") that the Commission issue an Order or Orders:

- (1) approving the terms of this Settlement Agreement between Paxson and NBC;
- (2) dismissing with prejudice the Paxson Petition; and
- (3) issuing a Notice of Proposed Rule Making in response to the NBC Petition.

(b) Paxson and NBC shall cause the preparation of all documentation needed properly to support said Joint Request, including any amendments or supplements that may be needed to support the construction permit application to relocate the site of WPXM's channel 26 DTV facilities to the Hollywood Antenna Farm (FCC File No. BPCDT-19991020\_\_\_) ("Paxson Relocation Application"). Each party shall fully cooperate with the other and the Commission by expeditiously and completely providing any additional information requested by the Commission. Without derogation of their respective rights under this Settlement Agreement, the parties, jointly and individually, shall use all commercially reasonable efforts to take no action inconsistent with this Settlement Agreement, the Joint Request, the dismissal of the Paxson Petition, the grant of the Paxson Relocation Application, as it may be amended, and the issue of a Notice of Proposed Rule Making on the NBC Petition, except as provided in Section 1(c). The parties further agree to engage in good faith efforts to address all objections of the Commission to the terms of this Settlement Agreement, where the resolution of such objections would not materially alter the business terms of this Settlement Agreement. Nothing in this Settlement Agreement shall be construed to preclude Paxson from seeking to amend the Paxson Relocation Application

(including modification of its proposed facilities). Except as otherwise provided herein, each party shall be responsible for paying its own costs incurred with respect hereto.

(c) In the event that prior to the date that the Commission may establish in a Notice of Proposed Rule Making in response to the NBC Petition as the due date for the submission of initial comments ("Comment Date") the Commission has not granted the Paxson Relocation Application, Paxson reserves the right to file comments in that proceeding either urging that the Paxson Relocation Application be granted prior to granting the NBC Petition or renewing Paxson's interest in Channel 31 as set forth in the Paxson Petition, or Paxson's interest in a substitute DTV channel to be located in the Hollywood Antenna Farm that could be construed as inconsistent with the NBC Petition. To the extent that the Paxson Relocation Application is granted prior to the Comment Date, Paxson shall not file comments that could be inconsistent with the NBC Petition and will file comments in support of the NBC Petition if NBC so requests.

2. **Warranties.** The parties to this Settlement Agreement represent and warrant that they have the full right and legal authority to execute and deliver this Settlement Agreement and to consummate the transactions contemplated hereunder. The parties further represent and warrant that they are not under any restrictions, contractual or otherwise, which prevent or preclude them from entering into this Settlement Agreement and from carrying out their obligations hereunder.

3. **Successors and Assigns.** This Settlement Agreement shall be legally binding upon and inure to the benefit of the parties hereto and their permitted respective transferees, successors and assigns. Paxson shall not assign its rights and obligations under this Settlement Agreement without obtaining the prior written consent of NBC. NBC shall not assign its rights or obligations hereunder without first obtaining the prior written consent of Paxson.

4. **Notices.** Except as otherwise provided, all notices, demands, payments and requests required or permitted by this Settlement Agreement shall be deemed to have been made if mailed certified or registered U.S. Mail, return receipt requested to the address stated below.

If to Paxson send to: Paxson Communications Corporation  
601 Clearwater Park Road  
West Palm Beach, FL 33401-6233  
Attention: William L. Watson, Esq.

AND Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Ave., N.W.  
Suite 800  
Washington, DC 20036  
Attention: John R. Feore, Jr., Esq.

If to NBC send to: NBC Stations Management, Inc.  
316 North Miami Avenue  
Miami, FL 33128  
Attention: Don Browne, President and General Manager

AND National Broadcasting Company, Inc.  
1299 Pennsylvania Avenue, N.W.  
11th Floor  
Washington, D.C. 20004  
Attention: Diane Zipursky, Esq.

or such other address as may be designated by any party in a written Notice to all other parties hereto complying as to delivery with the terms of this Section.

5. ***Remedies on Default.*** In the event that any party breaches this Settlement Agreement, the breaching party shall have ten (10) days from receipt of written notice of the breach from the notifying party to cure said breach, after which time it shall be deemed to be in default. In the event that any party is in default in the performance of the terms of this Settlement Agreement, except as otherwise provided herein, the other party shall have available to it all remedies upon default to which it is entitled under Florida law or at equity, and the rules, regulations and policies of the Commission, including any and all rights to the remedy of specific performance. Notwithstanding other rights reserved to the parties pursuant to this Settlement Agreement, the parties agree that the failure of any party to perform its obligations under this Settlement Agreement is one for which there is no adequate remedy at law, and that any party may seek injunctive relief or other equitable remedy in event of default by the other to compel the other to perform its obligations hereunder.

6. **Integration.** This Settlement Agreement contains the entire understanding between the parties with respect to the subject matter hereof and supersedes any prior written or oral understandings among the parties. This Settlement Agreement may be amended only by a written document executed by all parties.

7. **Counterpart Signature.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. **Termination.** In the event that the FCC has not granted the Paxson Relocation Application and the NBC Petition within fifteen (15) months from the date hereof or that such grants are not Final, then either party hereto, upon written notice to the other party, may terminate this Settlement Agreement.

9. **Construction.** This Settlement Agreement shall be construed under and governed by the laws of the State of Florida applicable to agreements to be performed wholly within the State of Florida, the Communications Act of 1934, as amended, and the Rules and Regulations of the Commission.

10. **Finality.** An Order is Final when it no longer is subject to administrative or judicial review, reconsideration, appeal or stay and the time for seeking any/all relief has expired with no such relief being sought and the time within which the FCC or a court may review or reconsider such Order has expired.

11. **Brokers' Fees.** Each party represents and warrants to the other that it has not used any broker or finder in connection with the transactions contemplated by this Settlement Agreement and that no finders', brokers', or other similar firms have been or will be used in connection with the transactions contemplated by this Settlement Agreement.

12. **Certifications.** By signing this Settlement Agreement, Paxson and NBC certify to the Commission under penalty of perjury that it did not file its petition for the purpose of entering into or carrying out a settlement agreement and the only consideration that has been paid or promised to Paxson to secure dismissal of the Paxson Petition is that which is stated in the Settlement Agreement.



*[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]*

***IN WITNESS WHEREOF***, the parties have caused this Settlement Agreement to be hereby duly executed on their behalf by their duly authorized representatives, in duplicate, with each deemed an original, as of the date first mentioned above.

PAXSON COMMUNICATIONS LICENSE CO., LLC

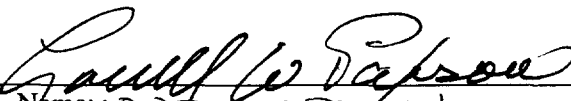
By: \_\_\_\_\_  
Name:  
Title:

NBC STATIONS MANAGEMENT, INC.

By: *Donald V. Browne*  
Name: Donald Browne  
Title President and General Manager

***IN WITNESS WHEREOF***, the parties have caused this Settlement Agreement to be hereby duly executed on their behalf by their duly authorized representatives, in duplicate, with each deemed an original, as of the date first mentioned above.

PAXSON COMMUNICATIONS LICENSE CO., LLC

By:   
Name: LOWELL W. PAXSON  
Title: Chairman

NBC STATIONS MANAGEMENT, INC.

By: \_\_\_\_\_  
Name:  
Title

**Joint Request Exhibit 2**

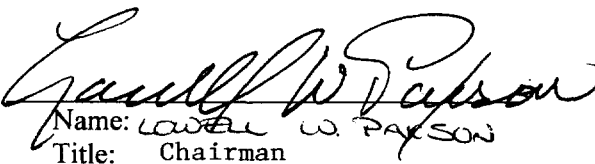
Clay Pendarvis, Chief  
Television Branch  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: Petition for Rule Making  
WPXM-DT, Miami, Florida

Dear Mr. Pendarvis:

Paxson Communications License Co., LLC ("Petitioner"), licensee of the above-listed station, respectfully requests that the Commission dismiss its petition for rule making seeking the substitution of channel 31 for the station's ~~S-D~~DTV allotment, with prejudice, contingent upon the grant of the Commission approvals specified in the Global Settlement Agreement with NBC Stations Management, Inc. ("NBC"). Petitioner initially filed a petition for reconsideration of the *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* (filed April 20, 1998; supplement filed May 26, 1998), seeking the substitution of DTV channel 31. The Commission ruled that it would treat it as a petition for rule making. *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, MM Docket 87-268, 14 FCC Rcd 1348 at ¶86 (1998). This request for dismissal is being filed in connection with a Global Settlement Agreement, a copy of which is being filed with this request for dismissal, which Petitioner entered into to resolve the mutual exclusivity with a similar petition filed by NBC. Both petitions remain pending. Petitioner submits that dismissal of its petition would serve the public interest.

PAXSON COMMUNICATIONS LICENSE CO., LLC

By:   
Name: LOWELL W. PAXSON  
Title: Chairman

Date: December 14, 1999

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing **JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT** was delivered via hand-delivery, this 16th day of December, 1999, to the following:

Mr. Clay Pendarvis  
Chief, Television Branch  
Video Services Division  
Mass Media Bureau, Room 2-A662  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Mr. John H. Morgan  
Mass Media Bureau, Room 2-C864  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554



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Lisa Saunders